

1 COOLEY LLP
STEVEN M. STRAUSS (99153) (sms@cooley.com)
2 JOHN S. KYLE (199196) (jkyle@cooley.com)
4401 Eastgate Mall
3 San Diego, California 92121
Telephone: (858) 550-6000
4 Facsimile: (858) 550-6420

5 TIMOTHY S. TETER (171451) (teterts@cooley.com)
JEFFREY S. KARR (186372) (jkarr@cooley.com)
6 Five Palo Alto Square
3000 El Camino Real
7 Palo Alto, CA 94306-2155
Telephone: (650) 843-5000
8 Facsimile: (650) 857-0663

9 Attorneys for Defendants
QUALCOMM INCORPORATED, SNAPTRACK, INC. and
10 NORMAN KRASNER

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA
13 SAN DIEGO DIVISION
14

15 GABRIEL TECHNOLOGIES
16 CORPORATION and TRACE
TECHNOLOGIES, LLC,

17 Plaintiffs,

18 v.

19 QUALCOMM INCORPORATED,
20 SNAPTRACK, INC. and NORMAN
KRASNER,

21 Defendants.
22

Case No. 08-cv-1992 AJB MDD

**DEFENDANTS QUALCOMM,
INCORPORATED, SNAPTRACK INC., AND
NORMAN KRASNER'S MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR AN ORDER TO SUBMIT
CERTAIN DOCUMENTS UNDER SEAL**

1 **I. INTRODUCTION**

2 Defendants Qualcomm Incorporated, SnapTrack, Inc. and Norman Krasner (collectively
3 “Defendants”) respectfully request that the Court seal portions of their Memorandum of Points
4 and Authorities in Support of Motion for Summary Judgment (“Moving Brief”) and certain
5 exhibits to the Declaration of Timothy S. Teter In Support of Defendants’ Motion For Summary
6 Judgment (“Teter Declaration”), both filed on August 10, 2012.

7 **II. PROCEDURAL HISTORY.**

8 On April 21, 2010, this Court issued a Protective Order [Dkt No. 67], the terms of which
9 were stipulated to by the Parties in this matter.

10 This Protective Order defines as “Confidential” “any document, thing, or information
11 (collectively “material”) which contains trade secrets or other confidential research, development
12 or commercial information.” (Protective Order at 1:2-5.) The Protective Order prohibits the
13 disclosure of Confidential materials except in certain enumerated circumstances. (*See id.* at 6:3-
14 12:3.) Section 13 of the Protective Order requires all confidential materials to be filed with the
15 Court under seal and requires any party wishing to file confidential materials under seal to seek
16 leave of Court pursuant to Civil Local Rule 79.2. The Protective Order further states that “subject
17 to public policy, and further court order, nothing shall be filed under seal, and the court shall not
18 be required to take any action, without separate prior order by the Judge before whom the
19 proceeding will take place, after application by the affected party with appropriate notice to
20 opposing counsel.” (*Id.* at 19:9-12.)

21 **III. ARGUMENT**

22 Defendants move to file under seal portions of the Moving Brief as well as Exhibits 2, 3,
23 12, 13, 14, 15, 20, 21, 22, 34, 39, 40, 41, 42, 43, 44, 45, and 48 to the Teter Declaration.

24 The evidence Defendants cite in the Moving Brief falls into two categories of Confidential
25 information as contemplated by the Protective Order—confidential documents and confidential
26 deposition testimony. With one exception, Exhibits 3, 12, 13, 14, 15, 20, 40 and 48 to the Teter
27 Declaration are documents produced by Gabriel in this litigation, which Gabriel has designated as
28

1 Confidential pursuant to the Protective Order.¹ Pursuant to Section 13 of that Protective Order,
 2 Defendants seek to file those exhibits under seal. Defendants further seek to file the Moving
 3 Brief under seal and then to redact from it the facts or argument that discloses the content of the
 4 exhibits that are designated Confidential in a subsequent publicly-filed version.

5 Exhibits 2, 21, 22, 34, 39, 41, 42, 43, 44, and 45 to the Teter Declaration are excerpts from
 6 deposition transcripts that Gabriel has asserted should be treated as confidential and handled in
 7 accordance with the Protective Order. Pursuant to Section 13 of that Protective Order,
 8 Defendants seek to file those exhibits under seal. Defendants further seek to file the Moving
 9 Brief under seal and then to redact from it the facts or argument that discloses the content of the
 10 transcripts that are designated Confidential in a subsequent publicly-filed version.

11 **IV. CONCLUSION.**

12 Based on the foregoing, Defendants respectfully requests that the Court issue an order
 13 permitting the filing under seal portions of the Moving Brief as well as Exhibits 2, 3, 12, 13, 14,
 14 15, 20, 21, 22, 34, 39, 40, 41, 42, 43, 44, 45, and 48 to the Teter Declaration. Defendants shall
 15 forthwith publicly file a redacted version of the Moving Brief.

16
 17 Dated: August 10, 2012

COOLEY LLP

18
 19 /s/ Jeffrey S. Karr

20 STEVEN M. STRAUSS (sms@cooley.com)

21 JEFFREY S. KARR (jkarr@cooley.com)

Attorneys for Defendants

22 764502 v1/SD

23
 24
 25
 26
 27 ¹ The only exhibit designated by Qualcomm as Confidential is Exhibit 40, which is a
 28 communication between SnapTrack and its outside patent counsel regarding a draft patent
 application.